

California State Water Resources Control Board  
Division of Financial Assistance

SUMMARY OF SIGNIFICANT ISSUES RAISED DURING PUBLIC COMMENT PERIOD  
ON DRAFT WATER RECYCLING FUNDING PROGRAM GUIDELINES (JULY 30, 2004)

September 21, 2004

Draft “Water Recycling Funding Guidelines” Revised July 30, 2004, were posted on the State Water Resources Control Board (SWRCB) Web site for public review. The public comment period ended September 3, 2004. Fifteen entities submitted written comments or questions, including 12 public agencies, one coalition of eight public agencies, one consultant, and one educational film producer. Most comments and questions warranted no change in the draft Guidelines. Several comments highlighted language in the text that was unclear and needed clarification. In a few cases, the issues raised were significant, these are described below along with the response of the Division of Financial Assistance, including a description of the changes made to the July 2004 Draft Guidelines in response to those comments.

1. Disadvantaged Communities, Section III.D.3

Six factors have been identified to assist in distributing the funds if grant funding requests from eligible Category I applicants exceed the available funds at the time of adoption of the Competitive Project List. The third factor in the July 2004 Draft Guidelines gives preference for projects that provide benefit to and/or are submitted by a disadvantaged community. A commenter from a small community recommended that top priority be given to disadvantaged communities.

Response: The first of the six factors is to reduce the maximum grant from \$5 million to \$4 million to fund a greater number of projects. This factor does not affect project ranking. The second factor listed in the July 2004 Draft is basically an allocation of available funds between northern and southern California to achieve geographic parity. The third factor is the preference for disadvantaged communities. The Division agrees that disadvantaged communities should be given higher priority and has revised the July 2004 Draft Guidelines accordingly.

2. Maximum Grant, Section III.A

The July 2004 Draft Guidelines propose the maximum grant to be retained at 25 percent of eligible construction cost or \$5 million. This maximum amount originated from Proposition 13 grant process in 2000 and had been supported by stakeholders at the time to allow a wide distribution of limited funds. Three commenters from northern California agencies recommended raising the percent funding to 50 percent. It was also suggested to raise the \$5 million maximum or to limit funding to project need, which could limit some applicants to less than the suggested 50 percent grant.

Response: Retaining the existing \$5 million maximum grant amount is recommended on the basis that funds are still limited and that other funds are available to increase the total subsidy. State Revolving Funds provide low interest loans that can be used to fund the remaining eligible construction costs, raising the subsidy to about 45 percent for projects costing less than \$20 million. Furthermore, several projects have been able to receive grants from the U.S. Bureau of Reclamation and subsidies from the Metropolitan Water District of Southern California.

### 3. State Water Project Emphasis, Section III.B, Table 2

The July 2004 Draft Guidelines described Category I projects as projects that

- “provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses (including groundwater recharge) that will offset water supplies from the State Water Project; and
- provide direct benefits to the Delta by:
  - increasing the average water flow into the Delta, or
  - reducing water pumping from the Delta.”

Category I projects will be funded by Proposition 50 funds, which come from Chapter 7 of the bond law for the CALFED Bay-Delta Program. One commenter suggested that “State Water Project” be replaced by “State water supply.”

Response: The Division agrees that the emphasis on the State Water Project was too narrow for the purposes of Proposition 50. The primary focus needs to be on benefiting the Delta. Thus, the language in the July 2004 Guidelines has been revised to read:

- “provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses (including groundwater recharge) that will offset State water supplies ~~from the State Water Project~~; and
- provide ~~direct~~ benefits to the Delta by:
  - increasing the average water flow into the Delta, or
  - reducing water pumping from the Delta.”

### 4. Prioritizing Applications Based on Cost of Recycled vs. Potable Water, Section III.D.5

Six factors were identified to assist in distributing the funds if grant funding requests from eligible Category I applicants exceed the available funds at the time of adoption of the Competitive Project List. The fifth factor in the July 2004 Draft Guidelines is prioritizing applications based on the cost of recycled water vs. potable water. Two commenters suggested that the scope of this cost comparison is too narrow. It is suggested that such an analysis did not reflect the full value of the recycled water to the community, the region, or the state. They recommended revising this factor to allow consideration of other project benefits, including non-quantifiable benefits.

Response: In order to be a useful ranking criterion, a cost comparison would have to be easily quantifiable and defensible. The suggested revision to the July 2004 Draft Guidelines would

entail a more comprehensive economic analysis to place an economic value on factors such as increased water supply reliability. This would be a more detailed analysis than most agencies are accustomed to. If non-quantifiable factors are included, as has been recommended, then the criterion becomes too subjective as a ranking tool. The Division reconsidered both the fifth factor and sixth factor, which is prioritizing applications based on the proposed acre-feet per year of recycled water delivered and the amount of potable water augmented. Both factors had weaknesses for determining which projects are better than others. Furthermore, it appears unlikely that the fifth and sixth factors would be needed after consideration of the first four factors. Therefore, the Division has deleted the last two factors in the Revised Guidelines proposed for adoption.

#### 5. Minimum Use Requirements, Section III.M

July 2004 Draft Guidelines state that an applicant must deliver at least 25 percent of the eligible project capacity to recycled water users within the first year of project operation. One commenter stated that it takes two to three years to achieve this level of deliveries and has recommended allowing this amount of time.

Response: July 2004 Draft Guidelines require that at least 50 percent of total eligible project capacity serve users that are in existence when project operation commences. It is expected that distribution facilities will be in place to serve all existing users when the project is finished. However, the July 2004 Draft Guidelines permit the applicant to deliver as little as 25 percent of project capacity in the first year if there is substantiation for why all existing users cannot be immediately served. Most applicants have been able to deliver 25 percent of project capacity in the first year. The current requirement has been retained in the Revised Guidelines proposed for adoption.

#### 6. Labor Code Compliance, Section I.E

The July 2004 Draft Guidelines made no reference to a provision in the California Labor Code, Section 1771.8, that requires a body awarding a contract for a public works project financed in any part with funds made available by Proposition 50 to adopt and enforce a labor compliance program pursuant to Section 1771.5(b). This omission was noted by one commenter.

Response: The Revised Guidelines proposed for adoption now include reference to this requirement.

#### 7. Eligibility of Category II Projects for Proposition 50 Funding, Section III.C

The Competitive Project List of proposed water recycling projects will include six categories. Category I is restricted to projects that provide benefits to the Delta. Proposition 50 funding is restricted to Category I projects. One commenter asked for better explanation of the basis of this restriction and another asked why Proposition 50 funds couldn't be used for Category II projects.

Response: The basis for this restriction is that the water recycling funds come from Chapter 7 of Proposition 50. Funding authorized in this chapter is designated for the CALFED Bay-Delta

Program. Category I was defined to serve the purpose of Chapter 7 of Proposition 50. A sentence to clarify this has been added to Section III.C of the Revised Guidelines proposed for adoption.

#### 8. Planning Grant Requirements and Retroactive Funding, Section II.C & II.D

The July 2004 Draft Guidelines specify that a facilities planning study conducted with a Facilities Planning Grant Program grant include five major elements, including recycled water market assurances. A Plan of Study is prepared as part of the grant application to provide minimal background information to support the scope of the study. One commenter suggested that the market assurances not be included in the study because they may be difficult to obtain with a \$75,000 grant. Another commenter suggested streamlining the application process for this program. A third comment was that retroactive funding be provided for planning studies commenced before an application was submitted similar to the concept that is included in the Guidelines for the Water Recycling Construction Grant Program.

Response: The purpose of the Facilities Planning Grant Program is to encourage new recycling studies and enhance the quality of local planning studies by supplementing local funds with grant assistance. The maximum of \$75,000 for a planning grant is specified in the bond laws authorizing this program. The requirement of at least a 50 percent local share is to ensure a greater local commitment to conducting an adequate study. The state grant is not intended to limit the amount an applicant can or should spend to complete the facilities planning process. The program was established to help applicants do the planning for design and construction of a project and seek state grant or loan assistance for project implementation. The grant was never intended to cover all planning costs. There is no basis for reducing the scope of an adequate planning study because the grant funds cannot cover all costs.

As required by statutory language, the July 2004 Draft Guidelines provide that if applicants are approved for a design and construction grant, they can request grant reimbursement retroactively for work that took place on or after January 1, 2004 (Section III.A). The apparent intent of this statutory provision was to accommodate the gap between passage of Proposition 50 in November 2002 and implementation of the funding programs to make Proposition 50 funds available. Planning grants are financed by Proposition 13, which was passed in 2000. The program is ongoing and applicants have been able to apply for planning grants before they commence planning studies. Therefore, Division staff is not recommending any change to the July 2004 Draft Guidelines to allow retroactive funding for planning grants.

#### 9. Urban Water Management Plans, Section I.E.5

California Water Code Section 10656 requires that an urban water supplier that does not prepare, adopt, and submit its urban water management plan to the Department of Water Resources as required by law is ineligible to receive funding pursuant to Proposition 13 of 2000. This requirement is not noted in the July 2004 Draft Guidelines.

Response: This requirement has been included in the Revised Guidelines proposed for adoption.

